

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC.,

Plaintiff-Counterclaim Defendant,

v.

LEACHCO, INC.,

Defendant-Counterclaim Plaintiff/
Third Party Plaintiff,

and

JAMIE S. LEACH,

Counterclaim Plaintiff/
Third Party Plaintiff,

v.

JOHN M. KIEFER, JR.,

Third Party Defendant.

No. 3:07-cv-01600-ARC

(Judge A. Richard Caputo)

(electronically filed)

MOTION TO DISMISS BY DEFENDANT LEACHCO, INC.

The Defendant moves, pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, to dismiss Count II of the Plaintiff's Amended Complaint (Doc. 42), for failure to state a claim.

The grounds for this Motion are explained in a Brief to be filed hereafter.

The undersigned counsel certifies that he has conferred by telephone with Dr. Andrew J. Katsock, III, counsel for Plaintiff, who advises that he will oppose this Motion.

A proposed Order is submitted herewith.

Respectfully submitted,

s/ Gary Peterson

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Attorneys for Defendant Leachco, Inc.

CERTIFICATE OF SERVICE

I certify that I electronically transmitted this document to the Clerk using the ECF System so as to cause transmittal of a Notice of a Electronic Filing to the following ECF registrant:

Andrew J. Katsock, III

Attorney for Babyage.com, Inc. and John M. Kiefer, Jr., on March 26, 2008.

s/ Gary Peterson